

**DISTRICT OF COLUMBIA**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
941 North Capitol Street, NE, Suite 9100  
Washington, DC 20002

DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND  
REGULATORY AFFAIRS  
Petitioner,

v.

MARIA DELOSANGELES ESCOBAR  
Respondent

Case No.: CR-I-05-P100035

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 - 2-1802.05. By Notice of Infraction (No. P100035) served November 11, 2005, the Government charged that Respondent Maria Delosangeles Escobar violated D.C. Official Code § 47-2834 by vending without a license at the 900 Block of M Street, N.W.<sup>1</sup> The Notice of Infraction alleged that the violation occurred on November 7, 2005, and sought a \$4,000 fine.

Respondent denied the alleged violation, and this court set the matter for hearing at 1:30 p.m., January 19, 2006. Mr. David Lang appeared for the Government along with the charging inspector, Mr. Curtis Wise.<sup>2</sup> The Respondent appeared along with Mr. Mark Mastripolito, who

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<sup>1</sup> D.C. Official Code § 47-2834 provides in pertinent part as follows:

[N]o person shall sell anything upon the public streets or from public space in the District of Columbia without a license under this section ...

<sup>2</sup> Mr. Lang is a Civil Infractions Advocate empowered to represent the Government as a non attorney pursuant to OAH Rule 2839.2.

owns Master Catering, Inc.<sup>3</sup> Because Ms. Escobar speaks limited English, the court engaged a court-certified Spanish interpreter to translate the proceeding. With the Government's consent, the court also granted Mr. Mastripolito latitude to assist Ms. Escobar in presenting her case. Based upon the testimony of the witnesses, my evaluation of their credibility, the exhibits admitted into evidence, and the entire record in this matter, I now make the following motions rulings, findings of fact, and conclusions of law.

## II. Motions Rulings

Respondent moved to dismiss the case on the grounds that another Administrative Law Judge previously found her not liable for the same substantive infraction charged in this case. Respondent's motion technically invoked the doctrine of collateral estoppel, which bars the same parties from re-litigating an ultimate issue of fact resolved in a prior final judgment. The District of Columbia Court of Appeals enunciates the doctrine of collateral estoppel as follows:

'Collateral estoppel' stands for an extremely important principle in the adversary system of justice. ... It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.' However, *the doctrine is generally applicable only where there has been a conclusive prior resolution of the precise factual question presented in the subsequent proceedings.*'

*Holt v. United States*, 805 A.2d 949, 956 (D.C. App. 2002) (internal citations omitted) (emphasis added).

The party invoking collateral estoppel bears the burden of establishing that a prior decision resolved the "precise factual question" presented in a subsequent proceeding. *Id.*

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<sup>3</sup> Respondent works for Master Catering, Inc. Prior case captions misidentified Master Catering, Inc. as a co-respondent. In fact, the Government charged only Ms. Escobar, and the court shall modify the case caption accordingly.

Toward that end, Respondent offered the opinion issued by Judge Barber in *DCRA v. Maria Delosangeles Escobar*, OAH No. CR-I-05-P100026 (served December 2, 2005) (“Escobar I”). See Court Exhibit (“CX”) CX-300. Respondent also offered three photographs of her vending operations at the Site taken by an Inspector Dedrick on November 3, 2005. See Respondent’s Exhibits (“RX”) RX-200A, 200B, and 200C.

*Escobar I* shares multiple common elements with this case. The parties, the charge, and the charging inspector (Curtis Wise) are all the same. The alleged geographic location of the violation is also the same, namely “the 900 block of M Street, Northwest, in the alley.” See *Escobar I*, CX-300 at 1. However, *Escobar I* did not resolve the “precise factual issue” central to this case. To wit, Judge Barber resolved an issue of geography, namely whether Ms. Escobar was in fact vending in the location alleged in the Notice of Infraction, *i.e.*, “in the alley.” Judge Barber found specifically that Ms. Escobar “was not in the alley.” *Id.* at 3. Three inspection photographs taken by Inspector Wise on August 3, 2005 cemented her conclusion:

Only photos taken on August 3, 2005 were admitted into evidence. PX 102, 104 and 105. None of these photos clearly shows Respondent *in an alley*, in support of the Notice of Infraction location.

*Id.* at 2 (emphasis added).

Unlike *Escobar I*, this case presents no dispute over the geographic location of Ms. Escobar’s vending. Here, the central issue is whether the pertinent geographic location is public or private property.<sup>4</sup> Moreover, Judge Barber anchored her opinion on three August 3, 2005 inspection photographs that are not part of the record in this case. The missing photographs

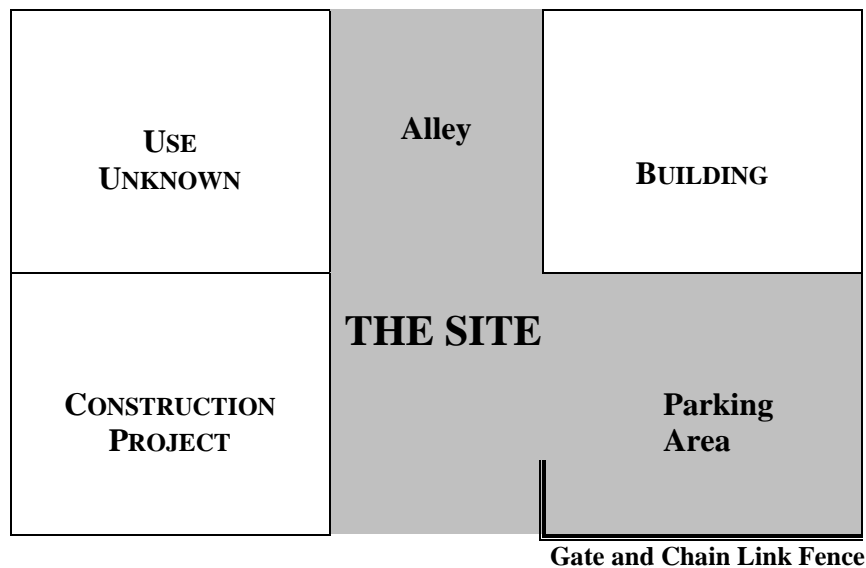
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<sup>4</sup> At the hearing, the parties referred to the vending location using a variety of labels, including the “alley,” the “public alley,” “the parking area,” the “construction site,” and the “Glen Construction site.” The labels refer to the same geographic location. The range of semantics merely reflects the parties’ core disagreement over whether the location is public or private property.

compel the court to conclude that Respondent failed to “demonstrate affirmatively that [*Escobar I*] resolved the precise factual question presented in the instant case.” *See Woodner v. Adams, et al.*, 534 A.2d 292, 296 (D.C. App. 1987). The doctrine of collateral estoppel therefore does not apply, and I shall deny Respondent’s motion to dismiss on that ground.

## II. Findings of Fact

The parties dispute whether Respondent sold food on public or private property. They dispute no other material fact. To wit, they agree that Ms. Escobar sold food out of a mobile kitchen without a license at a location consisting of an alley and adjoining parking area at the 900 block of M Street, N.W. (the “Site”). The Site occupies an “L” shaped area adjacent to an active construction project and a building:



This case turns on whether the Site is public or private property. If this issue came up in a multi-million dollar boundary dispute, the court would expect to receive comprehensive documentary evidence in the form of survey reports, plat maps, and a complete set of land records, including deeds and separately recorded easements. Of course, the economics of this \$4,000 case preclude either party from establishing the public/private status of the Site with mathematical precision. The court must therefore decide the issue on the limited record before it, which consists of the parties' conflicting testimony and five inspection photographs.<sup>5</sup>

The parties' testimony is too conclusory to carry substantial probative weight. Inspector Wise claimed that the Site is a public alley, and Respondent countered that it is a private construction area. Inspector Wise stressed (i) that he can differentiate public and private property based on his years of experience "working the streets" and (ii) that the alley is wide enough to be used by municipal trash trucks. Although the Inspector's experience is undeniable, the width of the alley does little to corroborate his opinion that the Site is public property. An alley wide enough for municipal trucks is also wide enough for private trucks. Inspector Wise held out no other specific feature(s) of the Site as indicia of public property.

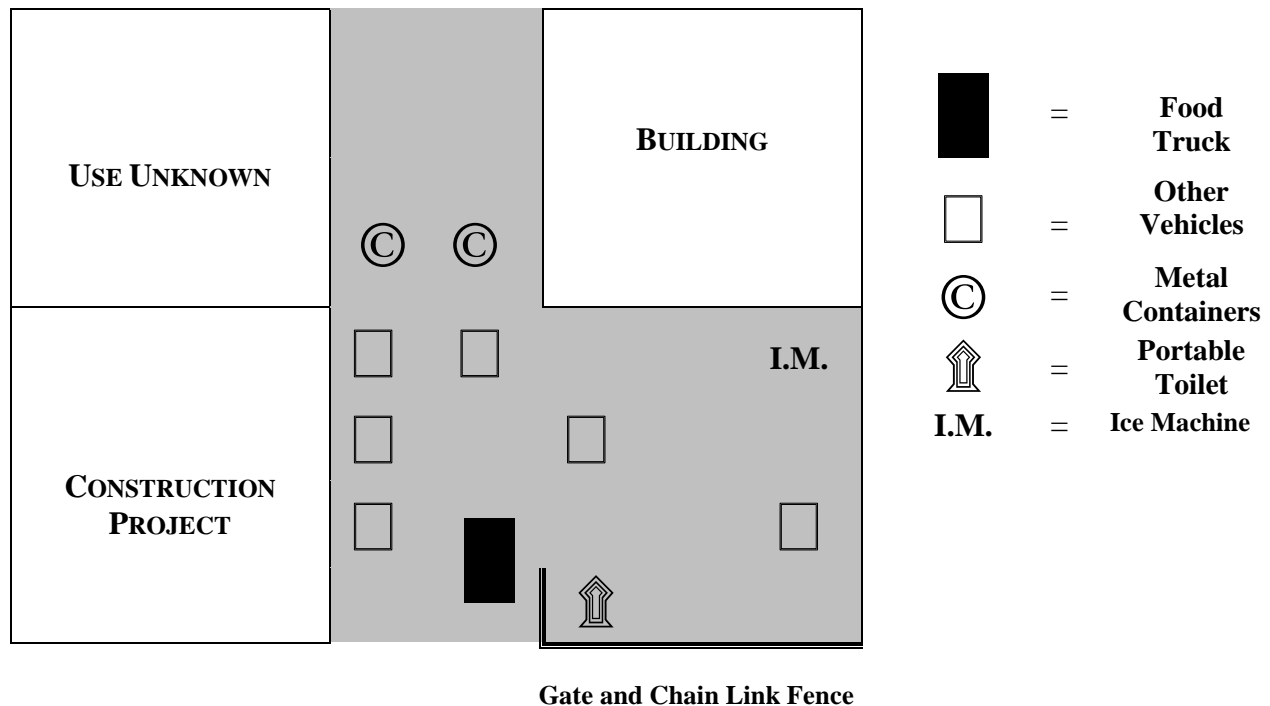
Given the conclusory testimony, the court must infer the public/private status of the Site from three photographs taken on November 3, 2005 (RX-200A, B, and C) and two photographs taken on November 7, 2005 (PX-102 and PX-103). The photographs depict Respondent's food truck in the parking area of the Site facing the alley with the driver's side door parallel to the construction project. Parked vehicles sit end-to-end along the boundary of the construction project to the left of the catering truck. *See* PX-103. Vans and pickup trucks also sit in the parking area to the front and

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<sup>5</sup> Only five inspection photographs depict features of the Site that shed light on its status as public or private property, namely PX-102, PX-103, RX-200A, RX-200B, and RX-200C.

right of the food truck. *See* PX-102, PX-103, and RX-200A.<sup>6</sup> The parked vehicles are bunched in a tight formation that would prevent other vehicles from passing through the Site.

Other noteworthy features of the Site include two large metal containers blocking the alley. *See* PX-103. The containers feature markings and ground-level latched doors typical of shipping containers—not dumpsters. *Id.* The containers, the food truck, and the other parked vehicles all sit inside a chain link fence with an inward-turning gate topped with razor wire. *See* RX-200A and 200C. A portable toilet sits immediately inside the fence to the right of the food truck, and an ice machine occupies the right-hand corner of the parking area. *See* RX-200A, 200B, and 200C. The following diagram fairly depicts the position of the parked vehicles, containers, portable toilet, ice machine, and fencing based on the photographs in the record:



<sup>6</sup> PX-102 depicts a close-up of the driver's side door of the food truck. A parked contractor van sits with its nose adjacent to the passenger front quarter-panel, and a Chevrolet pickup sits with its cargo bed perpendicular to the passenger door. PX-103 depicts the Site from behind the food truck, which faces a parked pickup and sits immediately to the right of three parked vehicles. PX-200A depicts the same general layout of vehicles, but from a wider angle.

The court finds that the Site is private property based principally on the photographic evidence, which reveals numerous features of the Site inimical to public ownership. Unlike a public street or alley, the Site cannot function as a throughway for cars and trucks due to the tightly bunched parked vehicles and containers. This bunching would also discourage pedestrian traffic commonly associated with public property. The portable toilet, ice machine, gate, and razor wire fencing likewise counsel against finding that the Site is public property. These factors are uniformly consistent with private construction operations—not public use.

### **III. Conclusions of Law**

The Government did not prove by a preponderance of the evidence that Respondent sold anything “upon the public streets or from public space” in violation of D.C. Official Code § 47-2834. The Government having failed to carry its burden on this dispositive issue, I shall dismiss the Notice of Infraction.

### **IV. Order**

Based on the above findings of fact and conclusions of law, it is this 17<sup>th</sup> day of February 2006

**ORDERED**, that Respondent Maria Delosangeles Escobar is **NOT LIABLE** for vending without a license in violation of D.C. Official Code § 47-2834, as charged in Notice of Infraction No. P100035; and it is further

**ORDERED**, that Notice of Infraction No. P100035 shall be and is hereby **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

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Scott A. Harvey  
Administrative Law Judge



## **APPEAL RIGHTS**

Pursuant to D.C. Official Code §§ 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing an original petition for review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk  
District of Columbia Court of Appeals  
H. Carl Moultrie I Courthouse  
500 Indiana Avenue, N.W., Sixth Floor  
Washington, DC 20001  
202-879-2700

The petition for review (and required copies) may be mailed or delivered in person to the Clerk of the D.C. Court of Appeals, and must be received by the Clerk of the Court of Appeals within thirty (30) calendar days of the mailing date of this Order, pursuant to D.C. App. R. 15(a)(2). Information on petitions for review to the Court of Appeals can be found in Title III of the Rules of the District of Columbia Court of Appeals.

### **IMPORTANT NOTICES:**

- 1. By law, the amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).**
- 2. Filing of a petition for review does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the presiding Administrative Law Judge denies a stay, you then may seek a stay from the D.C. Court of Appeals.**

**Certificate of Service:**

**By U.S. Mail (Postage Paid):**

Maria Delonsangeles Escobar  
3907 Peppertree Lane  
Silver Spring, MD 20906

I hereby certify that on \_\_\_\_\_,  
2006, this document was served upon the  
parties on this page at the addresses listed and  
by the means stated.

\_\_\_\_\_  
Clerk / Deputy Clerk

**By Inter-Agency Mail:**

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Julie Lee, Esq., General Counsel  
**cc: Mr. David Lang**  
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